

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.02.2019

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3384 of 2019
and
W.M.P.No.3667 of 2019

P.B.Mohideen Abdul Khader ...Petitioner

vs

1.State of Tamil Nadu, rep.by
The Secretary to Government
Personnel and Administrative Reforms Department
Fort St.George, Chennai - 600 009

2.The Tamil Nadu Public Service Commission,
Rep.by its Secretary,
TNPSC Road, VOC Nagar
Park Town,
Chennai - 600 003.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring that the Notification No.1/2019 dated 01.01.2019 of the 2nd respondent in so far as it erroneously fixed the maximum age limit criteria at clause 6 of the notification, as being illegal, arbitrary and unconstitutional and consequently direct the respondents to accept the candidature of the petitioner in the selection conducted by the second respondent.

For Petitioner : Mr.C.K.Chandrasekhar

For Respondents: M/s.P.Rajalakshmi
Additional Government Pleader for R1
Dr.M.Devendran for R2

O R D E R

The relief sought for in the present writ petition is to declare that the Notification No.1/2019 dated 01.01.2019 of the 2nd respondent in so far as it erroneously fixed the maximum age limit criteria at clause 6 of the notification, as being

illegal, arbitrary and unconstitutional and to direct the respondents to accept the candidature of the petitioner in the selection conducted by the second respondent.

2.The learned counsel appearing on behalf of the writ petitioner strenuously contended that the test of fairness of action is the principles is to be followed in the writ petition. Admittedly, as per the Recruitment Notification issued by the respondents on 01.01.2019, the writ petitioner is over aged and he crossed the age limit of 37 years prescribed for the category of M.B.C. However, the writ petitioner is not eligible to participate in the process of selection pursuant to the Notification issued by the 2nd respondent dated 01.01.2019. The learned counsel for the writ petitioner relying on the Government order passed in G.O.Ms.No.93, dated 17.07.2018, enhancing the maximum age limit of 37 years pursuant to the announcement of the Hon'ble Chief Minister in the floor of the Assembly. Thus, the Recruitment Notification ought to have been issued in advance, enabling the eligible persons to participate in the selection process.

3.On account of an administrative delay in issuing the recruitment notification, the writ petitioner lost his opportunity to participate in the selection process and therefore, by applying the test of fairness, the case of the writ petitioner is to be considered. The administrative delay caused by the 2nd respondent is unwarranted and there is no valid reason for such delay. Thus, applying the enhancement of maximum age limit provided in the Government order is to be extended to the writ petitioner and so also to other similarly placed persons.

4.Even, the Government order issued in G.O.Ms.No.93 dated 17.07.2018, paragraph 5 states that the "Necessary amendments to the Tamil Nadu Government Servants(Conditions of service) Act, 2016[Tamil Nadu Act 14 of 2016] will be made separately".

5.The learned counsel for the writ petitioner is unable to clarify, whether the amendments has already been carried out or not.

6.May that it be. This Court is of an opinion that the said Government order cannot have any implication in respect of the Recruitment Notification already issued by the 2nd respondent for selection to the Group-I Post. The Notification issued by the Tamil Nadu Public Service Commission is independent. If any concession granted and if the said condition is notified in the recruitment notification, then alone, the candidates are entitled to avail the said benefit. However, the Government order passed or the subsequent amendments made cannot have any

implications nor provided any right to the writ petitioner to claim age relaxation.

7.The maximum age limit as prescribed in the Recruitment Notification is to be strictly followed in respect of the applications received pursuant to the Recruitment Notification.

8.Appointment can never be claimed as a matter of right, so also, the selection and also for submission of application. Submission of application, process for selection and appointments are to be made strictly in accordance with the Recruitment Notification and as well as the Recruitment rules in force. There cannot be any violations in this regard by the competent authorities. Equal opportunity in public employment is the constitutional mandate. The equality clause enshrined cannot be diverted or diluted by the competent authorities, while undertaking the process of selection. However, the conditions to be stipulated is the prerogative of the State as far as the recruitment process is concerned. Once such conditions are finalized and published through the Recruitment Notification, the said conditions are binding on the candidates, who all are aspiring to secure public employment by participating in the open competitive process.

9.This being the legal principles to be followed, this Court is of an opinion that the Recruitment Notification was already issued on 01.01.2019 and the conditions for Recruitment are also stipulated in the impugned notification.

10.The learned counsel for the writ petitioner states that the Recruitment panel 2018-2019 was issued by the Tamil Nadu Public Service Commission without reference to the Government orders issued in G.O.Ms.No.93 dated 17.07.2018. Therefore, the principles of promissory estoppel is to be applied against the Tamil Nadu Public Service Commission in respect of the panel, which was finalized prior to the issuance of the Government order.

11.This Court is of an opinion that all such claims are made based on certain events took place. However, such announcements made in the floor of the Assembly and the Government orders would not provide any right on the candidate, so as to question the maximum age limit fixed by the Tamil Nadu Public Service Commission in the Recruitment Notification. If at all, any such further relaxation is to be granted, the same is to be granted by way of taking a policy decision by the Government and the Tamil Nadu Public Service Commission has to go by their own rules and regulations in respect of the issuance of the Recruitment Notification for Group-I services in the State of Tamil Nadu.

12.At the outset, all such decisions regarding the granting of age relaxation, prescription of quota and other educational qualifications etc., are to be fixed by the competent authorities for the purpose of appointing the persons. Prescription of all such qualifications are the prerogative of the administration for recruitment and the Courts cannot entertain a writ petition, so as to intervene with the prescription of such qualifications as well as the maximum age limit. Judicial Review in this regard is certainly limited. Only in extraordinary cases, where there is a violation of statutory provisions, then alone, power of judicial review can be exercised and not otherwise.

13.In the present case on hand, the Recruitment Notification was issued on 01.01.2019 in Notification No.1/2019, the maximum age limit was prescribed as 37 years for M.B.C. Unfortunately, the writ petitioner is short of 21 basis and the same cannot constitute a ground for the writ petitioner to challenge the very notification and such an unfortunate incidence occurred to few candidates cannot be a point for reversing the policy decision already taken and implemented by the respondents.

14.In this view of the matter, the writ petitioner has not made out any acceptable legal ground for the purpose of entertaining the writ petition and to consider the relief as such sought for in te present writ petition.

15.Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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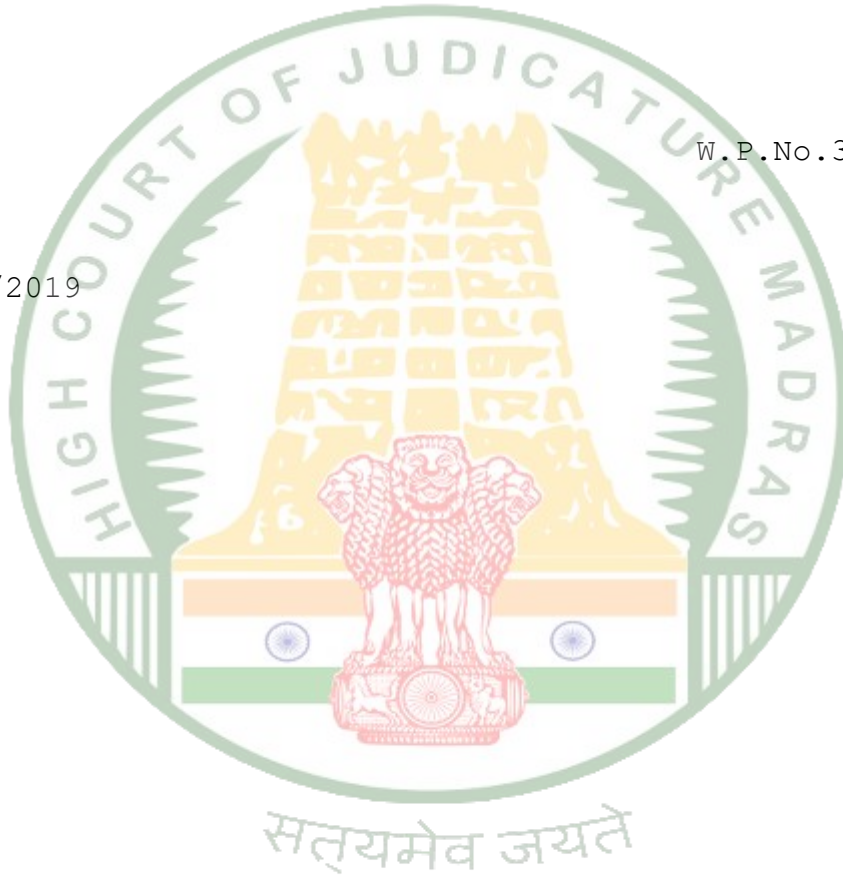
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+lcc to the Government Pleader sr.10818
+lcc to Mr.C.K.Chandrasekhar, Advocate Sr.9685
+lcc to Mr.M.Devendran, Advocate Sr.10855

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